

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

---

CARPENTERS INDUSTRIAL COUNCIL,  
et al.,

Plaintiffs,

and

SEATTLE AUDUBON SOCIETY,  
et al.,

Plaintiff-Intervenors,

v.

KEN SALAZAR, Secretary of the Interior,

Defendant.

---

Case No. 1:08-cv-01409-EGS

**NOTICE OF DEFENDANT'S POSITION**

In accordance with his March 23, 2009 notice filed in this action, Federal Defendant Ken Salazar, Secretary of the United States Department of the Interior, hereby notifies the Court and the parties of the government's determination as to its position in this litigation. As explained below, in light of that determination, it would be appropriate for the Court to stay these proceedings pending Defendant's filing of a further report with the Court, and, if necessary, a motion for voluntary remand.

As stated in Defendant's previous filings, the Investigative Report ("Report") issued by the Inspector General of the Department of the Interior on December 15, 2008 concluded that former Deputy Assistant Secretary of the Interior Julie MacDonald, acting alone or in concert with other

Department of the Interior officials, took actions that potentially jeopardized the decisional process in the U.S. Fish and Wildlife Service's ("Service") recovery plan for the northern spotted owl that is challenged by Plaintiff-Intervenors Seattle Audubon et al. ("Seattle Audubon")<sup>1/</sup> in this action. Plaintiff-Intervenors, along with Plaintiffs Carpenters Industrial Council et al. ("CIC"), also challenge the Service's revised critical habitat designation for the northern spotted owl, a portion of which is based on the final recovery plan. See, e.g., 73 Fed. Reg. 47,326, 47,326-28 (Aug. 13, 2008).<sup>2/</sup> Accordingly, the Service and Department of the Interior undertook a comprehensive review of the Report and the Service's files for the recovery plan and revised critical habitat designation and briefed the appropriate decision-makers.

The government has concluded its review and has decided that it is appropriate to seek a remand of the recovery plan and revised critical habitat designation. In light of this decision, Defendant would like to attempt to negotiate the parameters of a remand with Plaintiffs CIC and Plaintiff-Intevenors Seattle Audubon. Defendant requests 30 days to pursue these negotiations. At the expiration of this time period, Defendant proposes to file a report with the Court stating to what extent the parties have reached a settlement on the parameters of a remand. If necessary, within 15 days of filing that report, Defendant will file a motion for voluntary remand regarding any claims or issues for which settlement was not reached.

Given the government's decision, it would be appropriate for the Court to stay all other action in this case pending filing of the above-described report and any motion for voluntary remand

---

<sup>1/</sup> Seattle Audubon et al. also intervened as defendants as to certain claims raised by Plaintiffs CIC.

<sup>2/</sup>The remaining portion of the revised critical habitat designation is based on an option from an earlier draft of the recovery plan. See id.

and oppositions and replies thereto, including the requirements that Defendant file the administrative records for the recovery plan and revised critical habitat designation and file an answer to Plaintiff-Intervenors Seattle Audubon's complaint.<sup>3/</sup> Defendant intends to discuss the appropriateness of a stay at the status hearing scheduled for tomorrow, April 1, 2009.<sup>4/</sup>

Dated: March 31, 2009

Respectfully submitted,

JOHN C. CRUDEN  
Acting Assistant Attorney General  
Environment and Natural Resources Division

JEAN E. WILLIAMS, Chief  
LISA L. RUSSELL, Assistant Chief

/s/ Clifford E. Stevens, Jr.  
CLIFFORD E. STEVENS, JR., Trial Attorney  
D.C. Bar # 463906  
U.S. Department of Justice  
Environment and Natural Resources Division  
Wildlife and Marine Resources Section  
P.O. Box 7369  
Washington, DC 20044-7369  
Telephone: (202) 353-7548  
Facsimile: (202) 305-0275  
[clifford.stevens@usdoj.gov](mailto:clifford.stevens@usdoj.gov)

/s/ Beverly Li  
BEVERLY LI, Trial Attorney  
WSB # 33267  
U.S. Department of Justice  
Environment and Natural Resources Division  
Natural Resources Section

---

<sup>3/</sup> Defendant's answer to Plaintiff-Intervenors Seattle Audubon's complaint currently is due April 20, 2009. Defendant previously answered Plaintiffs CIC's complaint.

<sup>4/</sup> A stay would supercede Defendant's February 23, 2009 motion to alter or extend the proposed initial case schedule (which has not been acted upon by the Court). Accordingly, Defendant hereby withdraws that motion.

P.O. Box 663  
Washington, DC 20044-0663  
Telephone: (202) 353-9213  
Facsimile: (202) 305-0267  
[beverly.li@usdoj.gov](mailto:beverly.li@usdoj.gov)

Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on March 31, 2009, a copy of the foregoing Notice was served by CM/ECF electronic filing on the following attorneys of record:

Mark C. Rutzick  
MARK C. RUTZICK, INC.  
12402 Myra Virginia Ct.  
Oak Hill, VA 20171  
(703) 870-7347  
markrutzick@cox.net

Patti Goldman  
Kristen L. Boyles  
Earthjustice  
705 Second Avenue, Suite 203  
Seattle, WA 98104  
(206) 343-7340  
pgoldman@earthjustice.org  
kboyles@earthjustice.org

Paul A. Kampmeier  
Washington Forest Law Center  
615 Second Avenue, Suite 360  
Seattle, WA 98104-2245  
(206) 223-4088  
pkampmeier@wflc.org

/s/ Clifford E. Stevens, Jr.  
Counsel for Defendant